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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,240	11/14/2003	Kirby Williams Reese	18244-108780	4992

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,240	<b>Applicant(s)</b> REESE, KIRBY WILLIAMS	
	<b>Examiner</b> Raymond W. Addie	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 27-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 45 is objected to because of the following informalities: The preamble of the claim recites "A method comprising the steps of:". But does not recite what type of method it is. Hence, the method being claimed is vague. Is this a method of forming a road, perhaps a method of stabilizing soil? Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-32, 34-41, 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papetti # 4,726,708 in view of Taguchi et al. # 5,200,261.

Papetti discloses a temporary road and method of making comprising:

A support layer having an open top surface comprising:

A plurality of metal-wire, mattress-type, gabion containers (1), each having a plurality of compartments (10).

A ballast material (16) for substantially filling said compartments.

A traffic layer (3) supported by said top surface, and comprising a plurality of interlockable, metal panels, removably placed onto said top surface.

See fig. 5; Col. 1, Ins. 8-14; Col. 2, In. 64-Col. 3.

What Papetti does not disclose is the type of ballast material being used.

However, Taguchi et al. teaches it is known to use expanded polystyrene foam, having a fabric wrapper of polypropylene, to form a pontoon bridge and "other civil engineering materials". Such that "fiber reinforced foamed materials...are useful in fields in which impacts and other dynamic forces which could never be sustained by known materials, are expected to be applied. Wherein the "foamed product exhibits high shape maintaining characteristics and dimensional stability".

Therefore, it would have been obvious to one of ordinary skill in the art, to provide the temporary road of Papetti, with a fabric wrapped, foamed, polystyrene ballast material, as taught by Taguchi et al., in order to form a pontoon bridge or the like, capable of accommodating construction machinery. See Taguchi et al., Col. 1, Ins. 8-16; col. 3, ln. 67-col. 4, ln. 20; col. 5, ln. 67-col. 6, ln. 6.

In regards to claims 45-46 Papetti discloses a method comprising the steps of:

Providing a plurality of multi-compartment wire mesh gabions (1).

providing a plurality of movable panels (3).

Providing a filler material inside said compartments, substantially filling said gabions.

Assembling said gabions to form a support layer having a stop surface.

Placing a plurality of removable panels (3) onto said top surface to form a traffic layer so

that said support layer and said traffic layer interact to form at least one of a portable roadway and a portable platform to support vehicular traffic.

What Papetti does not disclose is the type of filler material used. However, Taguchi et al. teaches it is known to use a polystyrene foam encased in a fabric wrapper, as a filler material for pontoon type bridges. Therefore, it would have been obvious to one of ordinary skill, in the art, at the time the invention was made to provide the method of Papetti, with the step of providing a foamed filler material encased in a fabric wrapper, as taught by Taguchi et al., in order to form a roadway over soft soil or water.

3. Claims 33, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papetti # 4,726,708 in view of Taguchi et al. # 5,200,261 as applied to claims 27, 36 above, and further in view of Ragazzo # 5,636,938.

Papetti in view of Taguchi et al., disclose essentially all that is claimed, except for the use of PVC coated gabions. However, Ragazzo teaches it is known that

"Gabions may be made of steel wire (of square, rectangular, hexagonal or other shaped mesh. Different types of wire include galvanized steel, PVC coated, galfan steel and stainless steel wire".

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the gabion containers of Papetti in view of Taguchi et al., from PVC coated metal mesh, as taught by Ragazzo, in order to reduce corrosion and failure of the gabion system. See Col. 1.

***Response to Arguments***

5. The Examiner would like to acknowledge Applicant's participation in the personal interview on 7/31/06, with the Examiner of Record and Applicant's representative Thomas Lizzi. It is believed Applicant now has 1<sup>st</sup> hand knowledge of the issues the Examiner has raised, needing correction, in order to particularly point out and distinctly claim the invention disclosed.

**It is noted** Applicant's Representative, in responding to the interview summary, failed to acknowledge the Examiner distinctly pointed out specific ambiguous terms that would need to be clarified, in order to show patentability of the disclosed invention.

Specifically, Claim 27 requires "a support layer having a top surface". The "top surface" is undefined in the claim, having no structural feature that defines the scope or parameters of "a top surface".

It is not believed the claims distinctly point out that "a top surface" refers to a gabion container having a wire mesh top surface defining a closed gabion; as strongly suggested by the Examiner.

Further, Claim 27 requires "a traffic layer supported by said top surface, said traffic layer comprising a plurality of panels, each...being removably placeable onto said top surface". Again the necessary structural feature (the plurality of panels) are undefined by the claim.

Again, the Examiner strongly suggested amending the independent claim(s) to define the "traffic layer" as either a metal panel or an interlocking wood panel(s) as disclosed in the specification Page 6.

It is believed the Examiner clearly pointed out the limitation above with respect to "a traffic layer", does not preclude the prior art teaching of Papetti, which in Fig. 5 illustrates and col. 3, lns. 28-33, which clearly discloses:

"The upwardly open compartments 10 can be filled with ballast 16 (FIG. 5) and the cover sheet 3 can be applied".

Therefore, the rejection appears proper and is maintained.

**It is further noted** that during the interview of 7/3/06 Applicant's representative insisted a Notice of Allowance should be issued without further searching of the prior art. Which is contrary to standard US examination practice as set forth in MPEP 706 [R-3]. See also 37 CFR 1.104.

Applicant argues against the combination of Papetti in view of Taguchi et al. by suggesting "Papetti and Taguchi et al. do not teach...a portable roadway or portable platform...having sufficient strength to support construction vehicle traffic" and cites the paragraph "field of invention" of Papetti to support the argument.

However, the Examiner does not concur.

As cited above the claims do not define the structural feature(s) that define the "traffic surface".

Since the "traffic surface" is undefined by the claim, Applicant's arguments cannot be used to preclude the teachings of the prior art. Because Applicant suggestion Papetti does not disclose a traffic surface "having sufficient strength to support construction vehicle traffic" is clear conjecture, since there is no showing in the prior art, that the patented invention cannot support construction vehicle equipment.

Further, the recitation cited by Applicant's representative states "mattress-type gabion for use as...protective structures for preventing soil erosion caused by surface water and infiltration...road construction and similar works.

Hence, it is obvious to one of ordinary skill in the art, would use the gabion containers of Papetti to construct a roadway over inform soil.

Therefore, the argument is not persuasive and the rejection is maintained.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



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In this case, Papetti clearly discloses a mattress-type gabion "for use as a covering, or other protective structures...road construction and similar works".

Hence, it is known to use gabion containers in road construction.

It is further noted the Examiner has made of record US 6,381,792 reference to Woodfin, that teaches a bridge for supporting foot and vehicular traffic made from a flexible mesh gabion type containers having buoyant ballast material.

Applicant then argues against the reference to Taguchi et al. by suggesting "there is no suggestion...that Taguchi et al., teaches that the fiber-reinforced foam material is a ballast material".

However, as cited by Applicant, "Taguchi et al. emphasizes the light weight characteristics of the fiber-reinforced foam material by describing it as 'extremely lightweight' and by disclosing the material may be provided...and used as 'swimming aids for example'".

Hence, a light weight material appropriate for use as a "swimming aid" is obviously if not inherently "a filler material having a density less than that of water".

As required by independent claims 27, 36, 45.

Therefore, the arguments are not persuasive and the rejection is maintained.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Papetti discloses a gabion container for use in roadway construction, but does not disclose the use of a filler material that is less dense than water. However, Taguchi et al. teaches it is known to use expanded polystyrene foam, having a fabric wrapper of polypropylene, to form a pontoon bridge and "other civil engineering materials". Such that "fiber reinforced foamed materials...are useful in fields in which impacts and other dynamic forces which could never be sustained by known materials, are expected to be applied. Wherein the "foamed product exhibits high shape maintaining characteristics and dimensional stability".

Hence, it would have been obvious to one of ordinary skill in the art, to provide the gabion container of Papetti, with a light weight filler material, as taught by Taguchi et al., in order to accommodate large dynamic forces with dimensional stability and high shape maintaining characteristics.

Therefore, the argument is not persuasive and the rejection is maintained.

Applicant then argues "it would contradict the teachings of Papetti to use the lightweight fiber-reinforced foam material taught by Taguchi et al., to replace the ballast in Papetti's gabions and such a replacement would render Papetti's gabions unsatisfactory for their intended purpose of soil consolidation".

However, the Examiner does not concur. Papetti clearly discloses the use of the gabion containers in roadway construction i.e. the construction of roadways. Taguchi et al., teaches foam filled gabions are advantageously used in forming bridges over infirm soil and the like. Therefore, it would have been obvious to one of ordinary skill in the art to provide the gabions of Papetti, with a filler material less dense than water, in order to support a roadway or bridge on infirm soil and the like.

Applicant then argues "The applied art fails to teach the desirability of Applicant's claimed invention.

However, as put forth above, Papetti clearly discloses the use of the gabion containers in roadway construction i.e. the construction of roadways. Taguchi et al., teaches foam filled gabions are advantageously used in forming bridges over infirm soil and the like. Therefore, it would have been obvious to one of ordinary skill in the art to provide the gabions of Papetti, with a filler material less dense than water, in order to support a roadway or bridge on infirm soil and the like.

Applicant finally argues against the objection to claim 45 suggesting "in the last two years and found that at least 277 patents have been issued wherein the preamble of the respective claim 1...recites merely 'A method comprising the steps of'".

To which the Examiner concurs. Many patents have been granted having preambles as described by Applicant. And nothing in the MPEP requires a method claim to state an intended purpose.

However, Claim 45 was not rejected under 35 U.S.C. 112 2<sup>nd</sup> paragraph, as being indefinite. Rather, Claim 45 has been objected to as being vague because when reading the actual claim language, one of skill would not understand how to use the invention, only how to make the claimed invention, with no apparent use.

Therefore, the objection to Claim 45 appears proper and is maintained.

### ***Conclusion***

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 6AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Raymond Addie**  
**Primary Examiner**  
**Group 3600**

9/6/06